



June 17, 2015

Office of the Judge Advocate General
(Code 14)
1332 Patterson Avenue, S.E., Suite 3000
Washington Navy Yard, D.C. 20374-5066

RECEIVE BY (PRINT):

DATE REC.

(b) (6)

6/19/15

Signature:

ATTN: **FOIA Appeal**

Dear JAG,

On April 22, 2015, the Naval Criminal Investigative Service ("NCIS") denied my request under the Freedom of Information Act (5 U.S.C. § 552) for information pertaining to Mr. (b) (6) and Mr. (b) (6). These documents are related to the tragic accident that occurred on December 10, 2014 in the Middle Loch of Pearl Harbor, Hawaii. NCIS was able to locate at least one document responsive to my request.

However, NCIS refused to produce this document on the basis of the FOIA Exemption provided by 5 U.S.C. § 552(b)(7)(a). Exemption (7)(A) provides for the withholding of a law enforcement record when the disclosure of which would reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law enforcement investigation from interference through premature disclosure. Therefore, determining the applicability of Exemption 7(A) requires a two-step analysis focusing on (1) whether a law enforcement proceeding is pending or prospective and (2) whether release of information about it could reasonably be expected to cause some articulable harm. See, e.g., *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 224 (1978) (holding that government must show how records "would interfere with a pending enforcement proceeding").

I do not dispute that a law enforcement proceeding is ongoing. However, the Navy has not articulated how or why releasing the document(s) located by the Consolidated Law Enforcement Operations Center ("CLEOC") could reasonably be expected to cause articulable harm. The Navy has provided no reason why documents pertaining to (b) (6) and (b) (6) would be expected to hamper the NCIS investigation. If the Navy wishes to avail itself of FOIA Exemption 7(A), it must explain the grounds therefore.

As such, please consider this letter an appeal of NCIS's decision to refuse a properly lodged FOIA request without providing any explanation as to the grounds for the claimed Exemption. I reserve the right to appeal this matter to a federal District Court of competent jurisdiction. Thank you for your time and consideration in this matter.

Sincerely,

(b) (6)

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David Delleart

(b) (6)

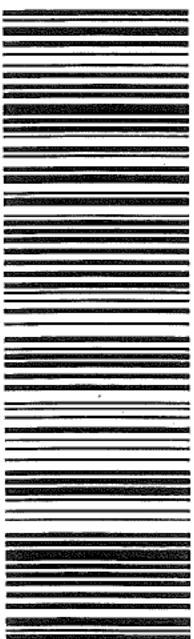
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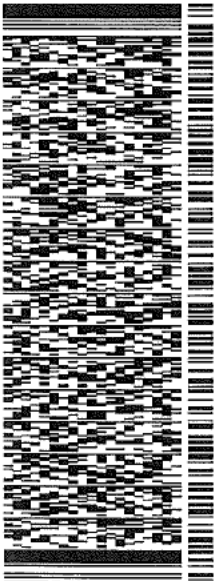


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TO - OFFICE OF JUDGE ADVOCATE GENERAL
CODE 14

(b) (6)

BILL SENDER

ORIGIN ID: SUSA
DAVID DEL LERT



SHIP DATE: 17JUN15
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